

General Information Letter: Notice of Intent to Levy Assets was sent to taxpayer in compliance with the requirements of the Illinois Income Tax Act.

February 21, 2001

Dear:

Your letter of January 19, 2001 has been forwarded to the Department's Legal Services Division for the purpose of providing the information requested regarding Illinois income tax. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be viewed on our website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Your letter states as follows:

This letter is in reply to an unsigned mailing I received on January 12. Included within it is a notice captioned "Taxpayers' Bill of Rights". Paragraph 3 of that notice says I have the right to ask questions. This letter is a request under the Taxpayers' Bill of Rights Act for answers to these questions. I reserve all administrative rights and appeals pending your reply.

- 1) "Yes" or "No": Are you responsible for sending that mailing? If you are kindly perfect it by placing your signature above your name on the attached copy and return it to me.
- 2) "Yes" or "No": Is it your intent that that mailing is the "demand" required by either 35 ILCS 120/5(f), or by 35 ILCS 5/1109? I am confused because copies of both were included. Please specify which of the amounts you purport are owing apply to which statute.
- 3) If your reply to the previous question is "No", Have I ever received the "demand" required by either 35 ILCS 120/5(f), or by 35 ILCS 5/1109? Again, I request a "Yes" or "No" reply.
- 4) How do I, a member of the general public distinguish a lawful statutory "demand" required by either 35 ILCS 120/5(f), or by 35 ILCS 5/1109, from an administrative tool? How do I know the person who sent it was acting within duly delegated lawful authority?
- 5) How do I, a member of the general public know that the taxes you purport are owing have been properly assessed?
- 6) Please identify my due process options regarding this matter, including all administrative hearings, appeals and procedures available to me.

If I do not receive poignant replies to these questions within 15 days of your receipt, I will proceed with the presumption that the subject mailing is fraudulent.

## **RULING**

With regard to your question 1), Mr. Kurt Wempen, Illinois Department of Revenue, initiated the Department's issuance of the "Final Notice of Intent to Levy Assets."

With respect to your question 2), please note the following. The "Final Notice of Intent to Levy Assets" issued by the Department January 5, 2001 relates to your Illinois income tax liability. Section 201(a) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 *et seq.*) imposes upon every individual for each taxable year a tax measured by net income on the privilege of earning or receiving income in or as a resident of Illinois. Section 601(a) of the IITA requires every taxpayer, "without assessment, notice or demand," to pay income tax due on or before the due date of the return.

The Department maintains several means by which to collect the liability for income tax created by sections 201(a) and 601(a). First, IITA section 1101(a) provides that if any person does not pay an income tax liability upon demand, the amount of the liability shall constitute a lien on all such person's property and rights to property. The lien generally arises automatically at the time of assessment, except that where the taxpayer has been issued a notice of deficiency the lien does not attach until all proceedings in court for review of the assessment have terminated. Thereafter, the Department's lien continues for 20 years from the date notice was filed. Second, pursuant to IITA section 902(c), at any time the Department may pursue levy proceedings under IITA section 1109 it may institute a collection action to recover any tax, interest, and penalties. Finally, IITA section 1109 allows the Department to levy upon all property and rights to property if any amount of tax due remains unpaid after demand, and if no proceedings have been taken regarding review of the liability.

In your case, the Final Notice of Intent to Levy Assets would constitute sufficient demand under IITA section 1109, such that the Department may pursue levy proceedings if the amount of tax due has not been timely paid and no proceedings have been taken to review the tax due.

With respect to your question 4), please note the following. IITA section 904 relates to deficiencies. Section 904(a) in part provides:

As soon as practicable after a return is filed, the Department shall examine it to determine the correct amount of tax. If the Department finds that the amount of tax shown on the return is less than the correct amount, it shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed. ... The findings of the Department under this subsection shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the amount of tax and penalties due.

Similarly, section 904(b) states:

If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the amount of tax due.

IITA section 904 means that the burden shifts to the taxpayer to establish a different tax liability than determined by the Department. Toward that end, the IITA grants taxpayers the right to protest and seek review of a notice of deficiency. IITA section 908(a) provides:

Within 60 days (150 days if the taxpayer is outside the United States) after the issuance of a notice of deficiency, the taxpayer may file with the Department a written protest against the proposed assessment in such form as the Department may by regulations prescribe, setting forth the grounds on which such protest is based. If a protest is filed, the Department shall

reconsider the proposed assessment and, if the taxpayer has so requested, shall grant the taxpayer or his authorized representative a hearing.

Where a taxpayer fails to timely protest a notice of deficiency, pursuant to IITA section 904(d) the same constitutes an assessment of the amount of tax and penalties specified. A taxpayer who disputes an assessed Illinois income tax liability must file a claim for refund pursuant to IITA section 909(d) and Illinois income tax regulations 100.9400. Under IITA section 911, a claim for refund must be filed not later than 3 years after the date the return was filed, or one year after the date the tax was paid, whichever is later.

Whether the decision of the Department follows a timely filed protest under section 908 or review of a refund claim under section 909, the taxpayer may seek judicial review. (IITA §1201)

With respect to your question 5), please note that in general Illinois income tax is self-assessed. Accordingly, IITA section 903(a) provides:

The amount of tax which is shown to be due on the return shall be deemed assessed on the date of filing of the return (including any amended showing an increase in tax). In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the Department shall notify the taxpayer that the amount of tax in excess of that shown on the return is due and has been assessed. Such notice of additional tax due shall be issued no later than 3 years after the date the return was filed. Such notice of additional tax due shall not be considered a notice of deficiency nor shall the taxpayer have any right of protest.

Of course, the Department may issue a notice of deficiency upon its determination of a different liability. Such deficiency may be assessed in the manner provided under IITA section 904, as set forth above. Unless the taxpayer initiates a timely protest, the notice of deficiency constitutes an assessment. Where a protest has been filed, however, the amount of deficiency is assessed on the date when the decision of the Department becomes final.

With regard to your question 6) please find enclosed copies of Illinois Department of Revenue Regulations Part 200 (Procedure for Administrative Hearings), Part 205 (Taxpayer Rights), Part 210 (Board of Appeals) and Part 100, Section 100.9600 (Judicial Review).

I hope this information is helpful. If you have further questions concerning this GIL you may contact the Legal Services Division at (217) 782-7055. If you have further questions related to the Illinois income tax laws, visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker  
Staff Attorney (Income Tax)